Bloomberg Tax

Tax Management

International Journal™

February 7, 2025

Digital Content, Cloud Rules See Mostly Clear Skies Ahead: Part 2

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In Part 2 of this two-part series, Baker McKenzie practitioners analyze the Proposed Cloud Sourcing Regulations and Notice 2025-6.

In Part 1, we discussed the "**Final Regulations**" (T.D. 10022, comprised of the "**Final Digital Content Regulations**" and "**Final Cloud Regulations**"), released by Treasury and the IRS on January 10, 2025. We now turn to the proposed regulations under Reg. §1.861-19(d), relating to the source of income from cloud transactions (the "**Proposed Cloud Sourcing Regulations"**) (REG-107420-24, 90 Fed. Reg. 3,075 (Jan. 14, 2025)), as well as Notice 2025-6, requesting comments on whether the Final Regulations should apply for all purposes of the Code, and not just for purposes of the enumerated international provisions of the Code.

I. The Proposed Cloud Sourcing Regulations

A. Background

In the preamble to the 2019 proposed regulations under Reg. §1.861-18 and Reg. §1.861-19 (the "**2019 Proposed Regulations**"), Treasury and the IRS specifically requested comments on "administrable rules for sourcing income from cloud transactions in a manner consistent with §861 through §865" (REG-130700-14, 84 Fed. Reg. 40,317, 40,321 (Aug. 14, 2019)). In response, taxpayers submitted more than a dozen comment letters that addressed whether specific sourcing rules for cloud transactions are required and, if so, the principles that should define those specific rules. The comments received were almost evenly split on the threshold question of whether Treasury and the IRS should propose specific sourcing rules for cloud transactions and, according to Treasury and the IRS, a narrow majority voiced their support for such an effort.

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Among the relevant commenters, clear support emerged for guidance that sourced services income from cloud transactions to the location of the assets and personnel used in providing the service, which would align with the principles espoused by *Piedras Negras Broadcasting Co. v. Commissioner* (43 B.T.A 297 (1941), *nonacq.*, 1941-2 C.B. 22, *aff'd*, 127 F.2d 260 (5th Cir. 1942)). (In *Piedras Negras*, the Tax Court determined that the income of a radio broadcasting company was foreign source because the company's broadcasting facilities and employees were located in Mexico. The Tax Court arrived at the conclusion that the income of the radio broadcasting company was foreign source even though the company's listeners were primarily located in the United States and almost all of its income was from advertisers located in the United States.

B. Taxpayer-By-Taxpayer Versus "Unitary" or Look-Through Approach

Treasury and the IRS also received comments discussing whether the sourcing determination should be according only to the assets and personnel of the taxpayer that recognizes the income from the performance of the cloud services (the taxpayer-by-taxpayer approach) or whether taxpayers should be required to look through to the activities and personnel of other related legal entities that contribute to the provision of the service (the unitary or look-through approach) (90 Fed. Reg. 3,076). The former approach is consistent with controlling Tax Court authority as expressed in *Miller v. Commissioner* (73 T.C.M. 2319 (1997), *aff'd*, 166 F.3d 1218 (9th Cir. 1998)) and the latter is the approach most often ascribed to the unusual edge case of *Le Beau Tours Inter-America, Inc. v. United States* (415 F. Supp. 48 (S.D.N.Y), *aff'd*, 547 F.2d 9 (2d Cir. 1976), *cert. denied*, 431 U.S. 904 (1977)). The preamble notes that nearly all comments that addressed the issue preferred the taxpayer-by-taxpayer approach. Treasury and the IRS laudably followed the controlling authority, and in addition, noted that the taxpayer-by-taxpayer approach is the more administrable one (90 Fed. Reg. 3,076). However, Treasury and the IRS also warned taxpayers that the taxpayer-by-taxpayer approach would not preclude the IRS from asserting other theories (such as the economic substance doctrine, the step-transaction doctrine, and the rules of agency, or existing statutory or regulatory provisions, including §482) to ensure that the tax consequences of a particular arrangement align with the economic realities of the transaction. This could include taking into account the contributions to a cloud transaction made by affiliates of the taxpayer. Notwithstanding this proposed regulation, Treasury and the IRS "will continue to study the implications of applying the taxpayer-by-taxpayer approach in the context of sourcing gross income from services generally, and may refine or propose revisions to the approach if they determine that this is necessary to adequately account for the interdependencies and collaboration across entities in a multinational group, and consequently, to ensure a fair an accurate representation of where services are performed." (90 Fed. Reg 3,077).

C. Operation of the Proposed Cloud Sourcing Regulations

In general, the Proposed Cloud Sourcing Regulations seek to apply the rule for sourcing income from the provision of services contained in §861(a)(3) and §862(a)(3), which source gross income from the provision of services to the place where the service is performed. The Code does not provide specific guidance on how taxpayers should determine the place of performance for specific types of service transactions, including cloud transactions. The Code also does not provide guidance on how taxpayers should source income from services that are rendered partly within and partly outside of the United States. Section 863(b)(1) provides that income from services rendered partly within and partly without the United States is treated as derived partly from each source (*See also* Reg. §1.861-4(b)). Therefore, Treasury and the IRS intend that the Proposed Cloud Sourcing Regulations "would establish specific sourcing rules that interpret the place of performance in the context of a cloud transaction" by

reference to "the place where the resources and personnel responsible for the development, management, and delivery of the service are located because this is where they key activities in the provision of the service occur" (90 Fed. Reg. 3,076).

Specifically, the Proposed Cloud Sourcing Regulations establish the place of performance of a cloud transaction through a formula that relies on three factors: (i) the intangible property factor; (ii) the personnel factor; and (iii) the tangible property factor. These factors thus define the major categories of contributions to the provision of cloud transactions as intangible property, certain employees, and tangible property, and allow for variations among taxpayers according to the relative incidence of those contributions. The three factors are discussed in further detail below.

In general, the Proposed Cloud Sourcing Regulations require the taxpayer to determine the amount of gross income from a cloud transaction that is from sources within the United States. Specifically, taxpayers multiply their gross income from a cloud transaction by a fraction, "the numerator of which is the sum of the portion of each of the intangible property factor, personnel factor, and tangible property factor that is from sources within the United States…and the denominator of which is the sum of the intangible property factor, personnel factor, and tangible property factor" worldwide (90 Fed. Reg. 3,076). Any remaining gross income is treated as foreign source income under Prop. Reg. §1.861-19(d)(1) (last sentence). Treasury and the IRS structured the Proposed Cloud Sourcing Regulations so that (i) Prop. Reg. §1.861-19(d)(2)(ii), (3)(ii), and (4)(ii) provide the rules for calculating the numerator of the ratio (i.e., the U.S.-source portion) for the intangible property factor, personnel factor, and tangible property factor, respectively, and (ii) Prop. Reg. §1.861-19(d)(2)(i), (3)(i), and (4)(i) provide the rules for calculating the denominator of the ratio (i.e., the total portion, including the U.S.) for the three factors, respectively.

Intangible Property Factor. Treasury and the IRS explain that the intangible property factor is meant to "reflect the contribution of intangible property to the provision of the cloud transaction." They note that they consider intangible property to be a "significant contributor" to the performance of cloud transactions and that intangible property "often plays a crucial role" in the performance of a cloud transaction. Recognizing that determining the precise value or contribution of an item of intangible property to the performance of a cloud transaction "would be difficult and burdensome," they explain that it is their view that "certain research and experimental expenses, amortization, and royalties incurred during the taxable year in which the cloud transaction is performed could serve as an administrable proxy for reflecting the contribution of intangible property to the performance of the cloud transaction" (90 Fed. Reg. 3,077). Accordingly, Prop. Reg. §1.861-19(d)(2)(i) would provide that the intangible property factor is the sum of:

- specified research or experimental ("**R&E**") expenditures (as defined in §174(b)) incurred during the taxable year that are associated with the cloud transaction; and
- amortization (other than amounts capitalized under §174(a)(2)(A) and amortized under §174(a)(2)(B)) and royalty expense for intangible property for the taxable year to the extent directly used to provide the cloud transaction.

The costs used to determine the intangible property factor are intended to include payments to third-party and related-party R&E providers (*See* 90 Fed. Reg. 3,077). To match the timing of when taxpayers compensate R&E employees, R&E expenditures are taken into account for these purposes as they are incurred, regardless of whether and when they are deductible. Treasury and the IRS explain in the Preamble to the Proposed Cloud Sourcing Regulations that taking the specified R&E expenditures in the

year incurred provides an administrable rule "that recognizes the economic contribution of the intangible property and avoids having to trace §174(a)(2)(B) amortization deductions back to the year in which incurred." This is in contrast to royalty and amortization expenses that are taken into account for purposes of determining the intangible property factor when deductible "because that is the most administrable proxy for measuring the economic contribution existing licensed or acquired intangible property makes to a cloud transaction" (90 Fed. Reg. 3,078).

Prop. Reg. §1.861-19(d)(2)(i) would apply a "product line" grouping rule for purposes of apportioning expenses to cloud transaction revenue. The Proposed Cloud Sourcing Regulations provide that cloud transactions would be considered to be in the same product line if they are within the same Corresponding Index Entry under a North American Industry Classification System ("**NAICS**") code number (Prop. Reg. §1.861-19(d)(8) (including a consistency requirement that would prevent taxpayers from changing Corresponding Index Entry and NAICS code numbers absent a change in facts.))."Connecting the intangible property factor to specific product lines is Treasury's and the IRS's attempt to "balance between specificity and practicality" by seeking to ensure that there is a factual relationship between the specified R&E expenditures and the cloud transaction being tested while at the same time acknowledging that "it is not necessarily possible to precisely determine the product or products that will benefit from a research and experimentation process at an early stage." (90 Fed. Reg. 3,078). To make sure that the expenses included in the intangible property factor are not counted twice in full, Prop. Reg. §1.861-19(d)(2)(i) includes a rule that would apportion expenses that would be included in the intangible property factor for multiple cloud transactions in a taxable year among those transactions based on the relative gross income earned from each transaction.

As noted above, the Proposed Cloud Sourcing Regulations would require taxpayers to determine the portion of the factor that is attributable to U.S. sources. To account for the inherent difficulty of determining the location of intangible property when used to provide a service, the portion of the intangible property factor that is from U.S. sources is determined based on the extent to which certain of the taxpayer's employees perform services in the United States (Prop. Reg. §1.861-19(d)(2)(ii)). Specifically, the Proposed Cloud Regulations refer to employees whose "primary function" is to perform R&E activities associated with cloud transactions in the same product line. Prop. Reg. §1.861-19(d)(5) defines an employee's "primary functions" as "the set of tasks to which they are assigned to spend the majority of their working time." The Proposed Cloud Sourcing Regulations leverage the principles of Reg. §1.861-4(b)(2)(ii)(E), which relates to sourcing compensation from labor or personal services on a time basis. Under the time basis approach, the amount included in gross income is the amount which bears the same relation to the total compensation as the number of days of performance of the labor or services within the United States bears to the total number of days of performance of labor or services for which payment is made. Accordingly, to determine the portion of the intangible property factor from sources within the United States whose "primary function" is to perform R&E activities associated with cloud transactions in the same product line as the cloud transaction the gross income of which is being sourced, taxpayers must perform the following calculation:

- divide the sum of the total compensation paid to the R&E personnel for services performed within the United States by the sum of the total compensation paid to the R&E personnel, and
- multiply the quotient resulting from the above equation by the intangible property factor described in Prop. Reg. §1.861-19(d)(2)(i) (Prop. Reg. §1.861-19(d)(2)(ii)).

Interestingly, while the denominator of the intangible property factor appears to take into account all of a taxpayer's R&E expenditures (which could include compensation for persons engaged in R&E activities

for the benefit of the taxpayer, as well as other R&E expenses), whether paid to related or unrelated persons, the numerator (which is used to allocate the portion of the intangible property factor attributable to U.S. sources) takes into account only compensation paid to the taxpayer's own employees. Example 12 refers to both compensation paid to R&E employees, as well as additional R&E costs "associated with developing new versions of Program Y and other products in the same product line" (Prop. Reg. §1.861-19(e)(12) (ex. 12)). Such an approach appears to be generally consistent with the taxpayer-by-taxpayer approach described above.

This approach for determining the intangible property factor gives rise to a few questions, which Treasury and the IRS anticipated in the Preamble to the Proposed Cloud Sourcing Regulations. In particular, is relying on the location of R&E personnel an appropriate and administrable way to determine the portion of the intangible property factor from U.S. sources and non-U.S. sources? Also, how common, if at all, is it for cloud companies to track R&E costs by product line? Finally, is it possible and practicable for cloud companies to link the contribution of intangible property developed in one year to a cloud transaction provided to a customer in a later year? Treasury and the IRS have specifically requested comments on these questions.

As discussed above, the denominator of the intangible property factor includes, in addition to a taxpayer's specified R&E expenditures, the taxpayer's amortization and royalty expense for intangible property to the extent used to provide a cloud transaction. However, the rules for allocating the portion of the intangible property factor to U.S. sources does not take into account amortization or royalty expenses. Thus, it appears that amortization and royalty expenses must also be allocated between U.S. and foreign sources based on the relative amounts of compensation paid to a taxpayer's R&E employees.

Personnel Factor. The personnel factor is intended to take into account the efforts of "the employees who manage, operate, and maintain [technology and infrastructure] systems [that] are also fundamental to the provision of the service" (90 Fed. Reg. 3,079). The personnel factor set forth in Prop. Reg. §1.861-19(d)(3)(i) explicitly excludes compensation that is paid to R&E personnel described in Prop. Reg. §1.861-19(d)(2). The goal of the personnel factor is to take into account "the efforts of personnel employed by the taxpayer who directly contribute to the provision of the cloud transaction" when determining the source of income from that cloud transaction. According to Treasury and the IRS, to properly reflect these individuals' contributions to the cloud transaction, the personnel factor is calculated according to the compensation paid to those employees whose primary function is to directly contribute to the provision of the cloud transaction, again, with the exception of R&E personnel (90 Fed. Reg. 3,079) As is the case for the intangible property factor, an employee's primary function is the set of tasks to which they are assigned to spend the majority of their working time (*See* Prop. Reg. §1.861-19(d)(5)).

Prop. Reg. §1.861-19(d)(3)(i) includes a special rule for situations in which an employee's primary function is to directly contribute to more than one cloud transaction, which provides that all of the employee's compensation should be allocated among those cloud transactions based on the relative amount of time the employee spends contributing to each transaction. Accordingly, where an employee spends 30% of their time working on cloud transaction 1, 30% of their time working on cloud transaction 2, and the remaining 40% of their time on something other than a cloud transaction, the employee's primary function is working on cloud transactions (because the employee spends a majority of their working time on cloud transactions). Based on this example, **all** of the employee's compensation is

allocated among cloud transaction 1 and cloud transaction 2 based on the relative amount of time the employee spends contributing to each of the two cloud transactions.

Prop. Reg. §1.861-19(d)(3)(i) includes another special rule for situations in which an employee contributes to multiple cloud transactions **simultaneously** . In such a situation, the employee's compensation is apportioned among the multiple cloud transactions based on the relative gross income earned from each transaction.

Similar to the intangible property factor, the numerator of the personnel factor is the portion of that factor from U.S. sources and is equal to the part of the personnel factor paid for services performed in the United States using the principles of Reg. §1.861-4(b)(2)(ii)(E), which relates to sourcing compensation from labor or personal services on a time basis (Prop. Reg. §1.861-19(d)(3)(ii)).

As noted above, the personnel factor focuses on the compensation paid to certain employees "whose primary function is to directly contribute to the provision of the cloud transaction." (Prop. Reg. §1.861-19(d)(3)(i)). Prop. Reg. §1.861-19(d)(3)(iii) provides guidance on which personnel are considered to directly contribute to the provision of the cloud transaction and states, "Personnel are considered to directly contribute to the provision of the cloud transaction to the extent they personally perform technical or operational activities for the provision of the cloud transaction, or to the extent they are a manager who directly supports or immediately supervises such technical or operational personnel." The Preamble to the Proposed Cloud Sourcing Regulations notes that Prop. Reg. §1.861-19(d)(3)(iii) provides a non-exhaustive list of the types of functions that are considered "technical or operational activities":

- conduct of scientific, engineering, or technical activities for the configuration, delivery, or maintenance of the cloud transaction;
- the provision of monitoring, diagnostics, or incident response with respect to the cloud transaction's performance, reliability, efficiency, or security;
- the management of the cloud transaction's infrastructure;
- the delivery of end-user support with respect to the cloud transaction; and
- the conduct of any similar functions.

The Proposed Cloud Sourcing Regulations juxtapose personnel who are considered to directly contribute to the provision of the cloud transaction with personnel who are not considered to directly contribute to the provision of the cloud transaction. This latter group of employees are those that conduct "business strategy, leadership, legal or compliance, marketing, communications, sales, business development, finance, accounting, clerical, human resources or administrative duties, or similar functions" (Prop. Reg. §1.861-19(d)(3)(iv)).

Treasury and the IRS's intent in establishing these two categories of personnel is to "identify the individuals that generally have the hands-on, day-to-day involvement in the software, infrastructure, and processes that enable the cloud transaction to be provided to the customer and to function as intended" (90 Fed. Reg. 3,079). In Treasury's view, the more removed an employee is from the performance of technical and operational work (and the immediate management thereof), the less able they are to directly contribute to the provision of the cloud transaction itself.

As discussed above, income derived by a SaaS reseller is also generally treated as being from a cloud transaction and is classified as income from the provision of services. However, a SaaS reseller's

employees generally perform neither R&E functions nor "technical or operational activities" for the provision of the cloud transaction. Rather, such employees typically perform activities such as marketing, communication, and sales, which under the Proposed Cloud Services Regulations are not considered to directly contribute to the provision of the cloud transaction. As a result, a SaaS reseller may have no amounts in any of the three factors used to determine the source of income from a cloud transaction. This would appear to mean that the income of a SaaS reseller operating outside the United States would be 100% foreign source. Treasury and the IRS have requested comments in the Preamble to the Proposed Cloud Sourcing Regulations on "whether a special rule is needed to source the gross income of resellers of cloud transactions, for example, whether the assets and employees other than those described in the proposed regulations better reflect the reseller's role in the cloud transaction." Because all (or most) of a SaaS reseller's employees are likely to be located in the country of the SaaS reseller, one would think that the SaaS reseller's income should be sourced 100% to that country.

Tangible Property Factor. Because of their dependence on physical infrastructure and hardware (e.g., servers and networking equipment), Treasury and the IRS view it as necessary that tangible property of the taxpayer that directly supports the provision of a cloud transaction is taken into account when determining the source of gross income from a cloud transaction. The tangible property factor, then, is intended to represent the contribution of tangible property to the performance of the cloud transaction. As a preliminary matter, using tangible property as a relevant factor in sourcing income from the performance of services is presumably intended to reflect that certain assets also play an important role in the delivery of cloud services, just as the delivery of the radio broadcasts in *Piedras Negras* required both assets and personnel (90 Fed. Reg. 3,079). Query, however, whether using assets to source income from cloud transactions comports with the statutory language in §861(a)(3) and §862(a)(3), which direct that income from "compensation for labor or personal services" be sourced by reference to the place of performance of the services.

Prop. Reg. §1.861-19(d)(4)(i) provides that the tangible property factor is the sum of:

- the depreciation expense for that taxable year for tangible property owned by the taxpayer, and
- rental expense for that taxable year for tangible property leased by the taxpayer.

Depreciation expenses and rental expenses are taken into account only to the extent directly used to provide the cloud transaction. In an effort to prevent double counting, Prop. Reg. §1.861-19(d)(4)(i) also includes a special rule requiring that any depreciation or rental expense that would be includible in the tangible property factor for multiple cloud transactions in a taxable year must be allocated among those transactions based on the relative gross income earned from each transaction.

The portion of the tangible property factor that is from U.S. sources is equal to the part of that factor attributable to property located within the United States (Prop. Reg. §1.861-19(d)(4)(ii)).

The Proposed Cloud Sourcing Regulations include specific guidance on the determination of depreciation expense. This rule provides that, for purposes of computing the tangible property factor, depreciation expense for a taxable year is determined by dividing the adjusted depreciable basis (as defined in Reg. §1.168(b)-1(a)(4)) of the tangible property by the appreciable recovery period as though the alternative depreciation system in §168(g)(2) applied for the entire period the property has been in service. Because Treasury and the IRS consider that this determination should be made without taking

into account tax incentives intended to accelerate the recovery of cost in order to provide an allocation of depreciation that more accurately reflects the tangible property's actual economic life, the Proposed Cloud Sourcing Regulations expressly provide that the depreciation expense is computed without regard to the election to expense certain depreciable property under §179 and without regard to any additional first-year depreciation provision (the rules give §168(k) as an example) (*See* Prop. Reg. §1.861-19(d)(4)(iii)).

The expenses that go into the tangible property factor are fairly narrowly prescribed as they include only depreciation expense and rental expense. Due to the energy demands of data centers, electricity costs can be a large portion of a cloud company's operating expenses. One of the specific requests for comments in the Preamble to the Proposed Cloud Sourcing Regulations asks, "whether additional operating costs incurred with respect to tangible property directly used in the provision of the cloud transaction, such as electricity costs associated with cloud transactions, should be included in the tangible property factor, and if so, how to capture the costs that contribute to the performance of the cloud transaction in an administrable manner." (90 Fed. Reg. 3,080).

D. Aggregation Rule

In an effort to "enhance the administrability of [the Proposed Cloud Sourcing Regulations] and to alleviate the compliance burden on taxpayers associated with the regulations," the Proposed Cloud Sourcing Regulations includes an aggregation rule that allows taxpayers to aggregate substantially similar cloud transactions and source the gross income from those aggregated transactions as if they were one transaction. Taxpayers are prohibited from aggregating substantially similar cloud transactions if the taxpayer "knows or has reason to know that doing so would materially distort the source of gross income from any cloud transaction" (*See* Prop. Reg. §1.861-19(d)(7)).

In the Preamble to the Proposed Cloud Sourcing Regulations, Treasury and the IRS provide an example to illustrate the aggregation rule in Prop. Reg. §1.861-19(d)(7). Interestingly, the example indicates that a cloud provider can have distinct but substantially similar cloud transactions even if those transactions do not fall within the same product line within the meaning of Prop. Reg. §1.861-19(d)(8).

The aggregation rule leaves undefined important terms like "substantially similar" and "materially distort."

E. Anti-Abuse Rule

Treasury and the IRS included an anti-abuse rule in Prop. Reg. §1.861-19(d)(9) to "prevent taxpayers from circumventing the purpose of the proposed regulations—to attribute the source of gross income from a cloud transaction to the place where the transaction is performed" (90 Fed. Reg. 3,080). The anti-abuse rule provides that if the taxpayer has entered into or structured one or more transactions with a principal purpose of reducing its U.S. tax liability in a manner inconsistent with the purpose of Prop. Reg. §1.861-19(d), appropriate adjustments will be made so that the source of the taxpayer's gross income reflects the location where the cloud transaction is performed.

II. Notice 2025-6

In response to the 2019 Proposed Regulations, some commenters requested that consideration should be given to applying the Final Regulations, discussed at length in Part 1 of this article, for all purposes of the Code. The Final Regulations do not do that.

Instead, the Final Regulations apply to only certain enumerated international provisions of the Code, including subchapter N of chapter 1 (§861 to §1000), §367, §404A, §482, §679, §1059A, chapters 3 (§1441 to §1465), §842 and §845 (to the extent involving a foreign person), and to transfers to foreign trusts not covered by §679. The Final Regulations added certain additional international provisions, namely, §59A (the base-erosion and anti-abuse tax (or BEAT)); §245A (dividends-received deduction for certain dividends received from certain foreign corporations), §250 (deduction for GILTI and FDII), §267A (relating to certain amounts paid involving hybrid transactions or hybrid entities), and chapter 4 (FATCA).

In Notice 2025-6, however, Treasury and IRS request comments on "any potential implications if [the Final Regulations] were to apply to all provisions of the Code, including the need for additional guidance, and seek specific comments on the possible impacts and guidance that may be necessary with respect to certain identified provisions." Section 3 of the Notice specifically requests comments, with examples where appropriate, on the possible interaction of the Final Regulations, with the following provisions of the Code: §167(f) (depreciation deduction for computer software), §168(g)(1)(B) (alternative depreciation system for "tax-exempt use property"), §178 (amortization of cost of acquiring a lease), §197 (amortization of goodwill and certain other intangibles), §263 (capital expenditures), §451 (general rule for taxable year of inclusion of gross income), §263A (capitalization and inclusion in inventory costs of certain expenses) and §471 (general rule for inventories), §856 through §859 (relating to REITs), §1001 (determination of amount and recognition of gain or loss) and §1011 (adjusted basis for determining gain or loss), §1221 (definition of "capital asset") and §1222 (definitions of other terms relating to capital gains and losses), and §1241 (treatment of amounts received for cancellation of lease or distributor's agreement).

Note: Notice 2025-6 was released on the IRS website on January 10, 2025. It provides for a 90-day comment period beginning on the date of the notice's publication in the Internal Revenue Bulletin. At the time of publication of this article, Notice 2025-6 has yet to be published in the Internal Revenue Bulletin, and a corresponding page has yet to be made available for electronic comments on Regulations.gov.